

## **Summary of “A Bill to Apply the Countervailing Duty Provisions of the Tariff Act of 1930 to Nonmarket Economy Countries, and For Other Purposes”**

The legislation confirms that the Department of Commerce can continue to apply countervailing duty (CVD) law to non-market economies (NMEs), such as China. This legislation is critical to leveling the playing field for U.S. employers and workers who face unfairly subsidized imports from countries like China.

### **Legislation overturns decision by the Court of Appeals for the Federal Circuit**

In December 2011, the Court of Appeals for the Federal Circuit (CAFC) found, in *GPX v. United States*, that U.S. law prohibits the Department of Commerce from applying CVDs to NMEs, including China. The CAFC decision stated that, in legislating in the area of trade remedies but not addressing an earlier Commerce practice of not applying CVD law to certain Soviet-style NMEs, Congress had implicitly ratified the practice and stripped Commerce of discretion to apply CVD law to NMEs entirely. This legislation overturns that decision.

### **Legislation is consistent with U.S. WTO obligations**

It is also important to note that WTO rules do not preclude the application of CVD laws to NMEs like China. Therefore, the legislation is fully compatible with our WTO obligations.

### **Legislation preserves the validity of existing countervailing duty orders**

If the CAFC's decision were allowed to stand, Commerce could likely be forced to terminate the 23 existing CVD orders against products from China (plus one from Vietnam) and the six ongoing investigations against Chinese and Vietnamese products, which could also result in the possible refund of already-collected duties. This would have an impact on over 80 American companies and tens of thousands of American workers in 38 states across this country. This legislation ensures that the 24 existing orders and six pending investigations against imports from China and Vietnam continue to be valid.

### **Legislation addresses an adverse WTO finding on “double remedies”**

Last year, the WTO Appellate Body found that there may be a “double remedy” in situations where countervailing duties are applied to NME exports at the same time that antidumping duties, calculated using the so-called “surrogate value” methodology, are applied to the exports. This legislation provides for Commerce to adjust antidumping duties to address any possible double remedy in these situations. Specifically, if a foreign exporter in a dumping case were able to demonstrate that there was an increase to its export prices due to a countervailed domestic subsidy and the use of the surrogate value methodology, Commerce would determine whether it could make a reasonable estimate of the extent of the increase to the dumping margin, and if so, make a corresponding reduction to the dumping margin.

### **Legislation has bipartisan, bicameral support and is supported by the Administration**

Identical legislation will be introduced in the House and Senate. The legislation was developed with, and is fully supported by, the Administration.